



U.S. Department of Justice
Office of Information Policy
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Washington, DC 20530-0001

Telephone: (202) 514-3642

Mr. Stuart Richardson
MuckRock News
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Re: Appeal No. DOJ-AP-2018-008266
Request No. 1412427
SRO:EMY

VIA: Email

Dear Mr. Richardson:

You appealed from the action of the Federal Bureau of Investigation on your Freedom of Information Act request for access to all records concerning Johann Joergen Jensen. I note that your appeal concerns the FBI's response dated August 10, 2018.

After carefully considering your appeal, I am affirming the FBI's action on your request. The FOIA provides for disclosure of many agency records. At the same time, Congress included in the FOIA nine exemptions from disclosure that provide protection for important interests such as personal privacy, privileged communications, and certain law enforcement activities. The FBI properly refused to confirm or deny the existence of records responsive to your request. Confirming or denying the existence of such records, including law enforcement records, concerning a third-party individual would constitute a clearly unwarranted invasion of personal privacy, and could reasonably be expected to constitute an unwarranted invasion of personal privacy. See 5 U.S.C. § 552(b)(6), (7)(C). Additionally, it is reasonably foreseeable that confirming or denying the existence of such records would harm the interests protected by these exemptions. See, e.g., People for the Ethical Treatment of Animals v. NIH, 745 F.3d 535, 544 (D.C. Cir. 2014) (upholding agency's refusal to confirm or deny existence of records that would confirm whether investigation of third party had occurred); see also Antonelli v. FBI, 721 F.2d 615, 618 (7th Cir. 1983) (finding that confirming whether third party has been the subject of investigation would likely "constitute an invasion of that person's privacy that implicates the protections of Exemptions 6 and 7").¹

To the extent that your request seeks access to records that would either confirm or deny an individual's placement on any government watch list, the FBI properly refused to confirm or deny the existence of any such records because their existence is protected from disclosure pursuant to 5 U.S.C. § 552(b)(7)(E). Exemption 7(E) concerns records or information compiled

¹ This Office is unable to verify the validity of the foreign language website that you proffered as proof of death.

for law enforcement purposes the release of which would disclose techniques and procedures or guidelines for law enforcement investigations or prosecutions. Further, it is reasonably foreseeable that confirming or denying an individual's placement on any government watch list would harm the interests protected by this exemption. See, e.g., Kalu v. IRS, 159 F. Supp. 3d 16, 23 (D.D.C. 2016). This response should not be taken as an indication that records do or do not exist. Rather, this is the standard response made by the FBI.

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your underlying request, and the action of the FBI in response to your request.

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

Sincerely,

12/21/2018

X 

Sean R. O'Neill
Chief, Administrative Appeals Staff
Signed by: OIP